

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 149

98TH GENERAL ASSEMBLY
2015

0754H.09T

AN ACT

To amend chapter 144, RSMo, by adding thereto one new section relating to tax incentives for data storage.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 144, RSMo, is amended by adding thereto one new
2 section, to be known as section 144.810, to read as follows:

**144.810. 1. As used in this section, unless the context clearly
2 indicates otherwise, the following terms mean:**

3 **(1) "Commencement of commercial operations", shall be deemed
4 to occur during the first calendar year for which the data storage
5 center is first available for use by the operating taxpayer, or first
6 capable of being used by the operating taxpayer, as a data storage
7 center;**

8 **(2) "Constructing taxpayer", if more than one taxpayer is
9 responsible for a project, the taxpayer responsible for the construction
10 of the facility, as opposed to the taxpayer responsible for the ongoing
11 operations of the facility;**

12 **(3) "County average wage", the average wages in each county as
13 determined by the department for the most recently completed full
14 calendar year. However, if the computed county average wage is above
15 the statewide average wage, the statewide average wage shall be
16 deemed the county average wage for such county for the purpose of
17 determining eligibility;**

18 **(4) "Data storage center" or "facility", a facility constructed,**

19 extended, improved, or operating under this section, provided that such
20 business facility is engaged primarily in:

21 (a) Data processing, hosting, and related services (NAICS
22 518210); or

23 (b) Internet publishing and broadcasting and web search portals
24 (NAICS 519130), at the business facility;

25 (5) "Existing facility", an operational data storage center in this
26 state as it existed prior to August 28, 2015, as determined by the
27 department;

28 (6) "Expanding facility" or "expanding data storage center", an
29 existing facility or replacement facility that expands its operations in
30 this state on or after August 28, 2015, and has net new investment
31 related to the expansion of operations in this state of at least five
32 million dollars during a period of up to twelve consecutive months and
33 results in the creation of at least five new jobs during a period of up to
34 twenty-four consecutive months from the date of conditional approval
35 for an exemption under this section, if the average wage of the new
36 jobs equals or exceeds one hundred fifty percent of the county average
37 wage. An expanding facility shall continue to be an expanding facility
38 regardless of a subsequent change in or addition of operating taxpayers
39 or constructing taxpayers;

40 (7) "Expanding facility project" or "expanding data storage center
41 project", the construction, extension, improvement, equipping, and
42 operation of an expanding facility;

43 (8) "Investment" shall include the value of real and depreciable
44 personal property, acquired as part of the new or expanding facility
45 project which is used in the operation of the facility following
46 conditional approval of an exemption under this section;

47 (9) "NAICS", the 2007 edition of the North American Industry
48 Classification System as prepared by the Executive Office of the
49 President, Office of Management and Budget. Any NAICS sector,
50 subsector, industry group, or industry identified in this section shall
51 include its corresponding classification in previous and subsequent
52 federal industry classification systems;

53 (10) "New data storage center project" or "new facility project",
54 the construction, extension, improvement, equipping, and operation of
55 a new facility;

56 (11) "New facility" or "new data storage center", a facility in this
57 state meeting the following requirements:

58 (a) The facility is acquired by or leased to an operating taxpayer
59 on or after August 28, 2015. A facility shall be deemed to have been
60 acquired by or leased to an operating taxpayer on or after August 28,
61 2015, if the transfer of title to an operating taxpayer, the transfer of
62 possession under a binding contract to transfer title to an operating
63 taxpayer, or an operating taxpayer takes possession of the facility
64 under the terms of the lease on or after August 28, 2015, or if the
65 facility is constructed, erected, or installed by or on behalf of an
66 operating taxpayer, such construction, erection, or installation is
67 completed on or after August 28, 2015;

68 (b) Such facility is not an expanding or replacement facility, as
69 defined in this section;

70 (c) The new facility project investment is at least twenty-five
71 million dollars during a period of up to thirty-six consecutive months
72 from the date of the conditional approval for an exemption under this
73 section. If more than one taxpayer is responsible for a project, the
74 investment requirement may be met by an operating taxpayer, a
75 constructing taxpayer, or a combination of constructing taxpayers and
76 operating taxpayers; and

77 (d) At least ten new jobs are created at the new facility during
78 a period of up to thirty-six consecutive months from the date of
79 conditional approval for an exemption under this section if the average
80 wage of the new jobs equals or exceeds one hundred fifty percent of the
81 county average wage;

82 Any facility which was acquired by an operating or constructing
83 taxpayer from another person or persons on or after August 28, 2015,
84 and such facility was employed prior to August 28, 2015, by any other
85 person or persons in the operation of a data storage center shall not be
86 considered a new facility. A new facility shall continue to be a new
87 facility regardless of a subsequent change in or addition of operating
88 taxpayers or constructing taxpayers;

89 (12) "New job", in the case of a new data center project, the total
90 number of full-time employees located at a new data storage center for
91 a period of up to thirty-six consecutive months from the date of
92 conditional approval for an exemption under this section. In the case

93 of an expanding data storage center project, the total number of full-
94 time employees located at the expanding data storage center that
95 exceeds the greater of the number of full-time employees located at the
96 project facility on the date of the submission of a project plan under
97 this section or for the twelve-month period prior to the date of the
98 submission of a project plan, the average number of full-time employees
99 located at the expanding data storage center facility. In the event the
100 expanding data storage center facility has not been in operation for a
101 full twelve-month period at the time of the submission of a project plan,
102 the total number of full-time employees located at the expanded data
103 storage center that exceeds the greater of the number of full-time
104 employees located at the project facility on the date of the submission
105 of a project plan under this section or the average number of full-time
106 employees for the number of months the expanding data storage center
107 facility has been in operation prior to the date of the submission of the
108 project plan;

109 (13) "Notice of intent", a form developed by the department of
110 economic development, completed by the project taxpayer, and
111 submitted to the department, which states the project taxpayer's intent
112 to construct or expand a data center and request the exemptions under
113 this program;

114 (14) "Operating taxpayer", if more than one taxpayer is
115 responsible for a project, the taxpayer responsible for the ongoing
116 operations of the facility, as opposed to the taxpayer responsible for
117 the purchasing or construction of the facility;

118 (15) "Project taxpayers", each constructing taxpayer and each
119 operating taxpayer for a data storage center project;

120 (16) "Replacement facility", a facility in this state otherwise
121 described in subdivision (7) of this subsection, but which replaces
122 another facility located within the state, which the taxpayer or a
123 related taxpayer previously operated but discontinued operating within
124 one year prior to the commencement of commercial operations at the
125 new facility;

126 (17) "Taxpayer", the purchaser of tangible personal property or
127 a service that is subject to state or local sales or use tax and from
128 whom state or local sales or use tax is owed. Taxpayer shall not mean
129 the seller charged by law with collecting the sales tax from the

130 purchaser.

131 2. In addition to the exemptions granted under chapter 144,
132 project taxpayers for a new data storage center project shall be
133 entitled, for a project period not to exceed fifteen years from the date
134 of conditional approval under this section and subject to the
135 requirements of subsection 3 of this section, to an exemption of one
136 hundred percent of the state and local sales and use taxes defined,
137 levied, or calculated under section 32.085, sections 144.010 to 144.525,
138 sections 144.600 to 144.761, or section 238.235, limited to the net fiscal
139 benefit of the state calculated over a ten year period, on:

140 (1) All electrical energy, gas, water, and other utilities including
141 telecommunication and internet services used in a new data storage
142 center;

143 (2) All machinery, equipment, and computers used in any new
144 data storage center; and

145 (3) All sales at retail of tangible personal property and materials
146 for the purpose of constructing any new data storage center.

147 The amount of any exemption provided under this subsection shall not
148 exceed the projected net fiscal benefit to the state over a period of ten
149 years, as determined by the department of economic development using
150 the Regional Economic Modeling, Inc. dataset.

151 3. (1) Any data storage center project seeking a tax exemption
152 under subsection 2 of this section shall submit a notice of intent and a
153 project plan to the department of economic development, which shall
154 identify each known constructing taxpayer and known operating
155 taxpayer for the project and include any additional information the
156 department of economic development may require to determine
157 eligibility for the exemption. The department of economic development
158 shall review the project plan and determine whether the project is
159 eligible for the exemption under subsection 2 of this section,
160 conditional upon subsequent verification by the department that the
161 project meets the requirements in subsection 1 of this section for a new
162 facility project. The department shall make such conditional
163 determination within thirty days of submission by the operating
164 taxpayer. Failure of the department to respond within thirty days shall
165 result in a project plan being deemed conditionally approved.

166 (2) The department of economic development shall convey

167 conditional approvals to the department of revenue and the identified
168 project taxpayers. After a conditionally approved new facility has met
169 the requirements in subsection 1 of this section for a new facility and
170 the execution of the agreement specified in subsection 6 of this section,
171 the project taxpayers shall provide proof of the same to the department
172 of economic development. Upon verification of such proof, the
173 department of economic development shall certify the new facility to
174 the department of revenue as being eligible for the exemption dating
175 retroactively to the first day of construction on the new facility. The
176 department of revenue, upon receipt of adequate proof of the amount
177 of sales taxes paid since the first day of construction, shall issue a
178 refund of taxes paid but eligible for exemption under subsection 2 of
179 this section to each operating taxpayer and each constructing taxpayer
180 and issue a certificate of exemption to each new project taxpayer for
181 ongoing exemptions under subsection 2 of this section. The department
182 of revenue shall issue such a refund within thirty days of receipt of
183 certification from the department of economic development.

184 (3) The commencement of the exemption period may be delayed
185 at the option of the operating taxpayer, but not more than twenty-four
186 months after the execution of the agreement required under subsection
187 6 of this section.

188 4. In addition to the exemptions granted under chapter 144, upon
189 approval by the department of economic development, project
190 taxpayers for expanding data center projects may, for a period not to
191 exceed ten years, be specifically exempted from state and local sales
192 and use taxes defined, levied, or calculated under section 32.085,
193 sections 144.010 to 144.525, sections 144.600 to 144.761, or section
194 238.235 on:

195 (1) All electrical energy, gas, water, and other utilities including
196 telecommunication and internet services used in an expanding data
197 storage center which, on an annual basis, exceeds the amount of
198 electrical energy, gas, water, and other utilities including
199 telecommunication and internet services used in the existing facility or
200 the replaced facility prior to the expansion. For purposes of this
201 subdivision only, "amount" shall be measured in kilowatt hours, gallons,
202 cubic feet, or other measures applicable to a utility service as opposed
203 to in dollars, to account for increases in utility rates;

204 (2) All machinery, equipment, and computers used in any
205 expanding data storage center; and

206 (3) All sales at retail of tangible personal property and materials
207 for the purpose of constructing, repairing, or remodeling any
208 expanding data storage center.

209 The amount of any exemption provided under this subsection shall not
210 exceed the projected net fiscal benefit to the state over a period of ten
211 years, as determined by the department of economic development using
212 the Regional Economic Modeling, Inc., data set or comparable data.

213 5. (1) Any data storage center project seeking a tax exemption
214 under subsection 4 of this section shall submit a notice of intent and a
215 project plan to the department of economic development, which shall
216 identify each known constructing taxpayer and each known operating
217 taxpayer for the project and include any additional information the
218 department of economic development may reasonably require to
219 determine eligibility for the exemption. The department of economic
220 development shall review the project plan and determine whether the
221 project is eligible for the exemption under subsection 4 of this section,
222 conditional upon subsequent verification by the department that the
223 project meets the requirements in subsection 1 of this section for an
224 expanding facility project and the execution of the agreement specified
225 in subsection 6 of this section. The department shall make such
226 conditional determination within thirty days of submission by the
227 operating taxpayer. Failure of the department to respond within thirty
228 days shall result in a project plan being deemed conditionally
229 approved.

230 (2) The department of economic development shall convey such
231 conditional approval to the department of revenue and the identified
232 project taxpayers. After a conditionally approved facility has met the
233 requirements in subsection 1 of this section, the project taxpayers shall
234 provide proof of the same to the department of economic
235 development. Upon verification of such proof, the department of
236 economic development shall certify the project to the department of
237 revenue as being eligible for the exemption dating retroactively to the
238 first day of the expansion of the facility. The department of revenue,
239 upon receipt of adequate proof of the amount of sales taxes paid since
240 the first day of the expansion of the facility, shall issue a refund of

241 taxes paid but eligible for exemption under subsection 4 of this section
242 to any applicable project taxpayer and issue a certificate of exemption
243 to any applicable project taxpayer for ongoing exemptions under
244 subsection 4 of this section. The department of revenue shall issue
245 such a refund within thirty days of receipt of certification from the
246 department of economic development.

247 (3) The commencement of the exemption period may be delayed
248 at the option of the operating taxpayer, but not more than twenty-four
249 months after the execution of the agreement required under subsection
250 6 of this section.

251 6. (1) The exemptions in subsections 2 and 4 of this section shall
252 be tied to the new or expanding facility project. A certificate of
253 exemption in the hands of a taxpayer that is no longer an operating or
254 constructing taxpayer of the new or expanding facility project shall be
255 invalid as of the date the taxpayer was no longer an operating or
256 constructing taxpayer of the new or expanding facility project. New
257 certificates of exemption shall be issued to successor constructing
258 taxpayers and operating taxpayers at such new or expanding facility
259 projects. The right to the exemption by successor taxpayers shall exist
260 without regard to subsequent levels of investment in the new or
261 expanding facility by successor taxpayers.

262 (2) As a condition of receiving an exemption under subsection 2
263 or 4 of this section, the project taxpayers shall enter into an agreement
264 with the department of economic development providing for repayment
265 penalties in the event the data storage center project fails to comply
266 with any of the requirements of this section.

267 (3) The department of revenue shall credit any amounts remitted
268 by the project taxpayers under this subsection to the fund to which the
269 sales and use taxes exempted would have otherwise been credited.

270 7. Any project taxpayer who submits a notice of intent to the
271 department of economic development to expand a new facility by
272 additional construction, extension, improvement, or equipping within
273 five years of the date the new facility became operation shall be
274 entitled to request the department undertake an additional analysis to
275 determine the projected net fiscal benefit of the expansion to the state
276 over a period of ten years as determined by the department using the
277 Regional Economic Modeling, Inc. dataset or comparable data and shall

278 be entitled to an exemption under this section not to exceed such fiscal
279 benefit to the state for a period of not to exceed fifteen years.

280 8. The department of economic development and the department
281 of revenue shall cooperate in conducting random audits to ensure that
282 the intent of this section is followed.

283 9. Notwithstanding any other provision of law to the contrary,
284 no recipient of an exemption pursuant to this section shall be eligible
285 for benefits under any business recruitment tax credit, as defined in
286 section 135.800.

287 10. The department of economic development and the
288 department of revenue shall jointly prescribe such rules and
289 regulations necessary to carry out the provisions of this section. Any
290 rule or portion of a rule, as that term is defined in section 536.010, that
291 is created under the authority delegated in this section shall become
292 effective only if it complies with and is subject to all of the provisions
293 of chapter 536 and, if applicable, section 536.028. This section and
294 chapter 536 are nonseverable, and if any of the powers vested with the
295 general assembly pursuant to chapter 536 to review, to delay the
296 effective date, or to disapprove and annul a rule are subsequently held
297 unconstitutional, then the grant of rulemaking authority and any rule
298 proposed or adopted after August 28, 2015, shall be invalid and void.

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